

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NOS. 3:09cr234-02 & 3:12cv388

UNITED STATES OF AMERICA,)
Plaintiff(s),)
vs.)
CHARLES R BURNS,)
Defendant(s).)

ORDER

DEFENDANT CHARLES R. BURNS, *pro se*, has filed three separate motions (Doc. Nos. 68, 71, and 74 in 3:09cr234 and Doc. No. 1 in 3:12cv388) seeking a reduction in his sentence based upon the recent Supreme Court decision Dorsey v. United States, 132 S.Ct. 2321 (2012), and the recent Fourth Circuit decision United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). Because the Court finds that Dorsey *does* apply to the Defendant's case but Simmons *does not*, the Court GRANTS IN PART and DENIES IN PART the Defendant's motions to reduce his sentence.

As to Simmons, the Court finds that the Defendant's two prior felony convictions occurred before the State of North Carolina adopted Structured Sentencing in 1994. See Doc. No. 7.¹ Thus, both of his prior felony convictions had a maximum term of imprisonment in

¹The Defendants prior convictions are: Felony Possession of Cocaine (Docket No. 1991CRS013966), in the Superior Court Division for Mecklenburg County, North Carolina, July 5, 1991, and, Felony Possession of Cocaine (Docket No. 1992CRS084487), in the Superior Court Division for Mecklenburg County, North Carolina, February 5, 1993.

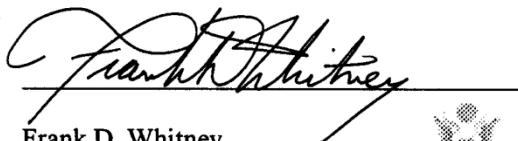
excess of one year and qualify as felonies under Simmons. Therefore, Simmons provides the Defendant no relief.

As to Dorsey, however, the Defendant does receive the benefit of the retroactive application of the Fair Sentencing Act because, although his crime of conviction – conspiracy to distribute cocaine base – occurred before the effective date of the Fair Sentencing Act on August 3, 2010, he was sentenced after that date on May 17, 2011. Accordingly, his sentence should be and will be reduced pursuant to Dorsey as set forth in the Supplement to the Presentence Report (Doc. No. 72).

THEREFORE, the sentence of Defendant CHARLES R. BURNS is hereby reduced from 168 months to 120 months.

The Clerk of Court will certify a copy of this Order to the United States Marshals' Service and the United States Bureau of Prisons.

Signed: December 28, 2012



Frank D. Whitney
United States District Judge
